

Service Date: July 19, 2002

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF Carl James Asimus and)
Joshua Harlow Stevens, a Partnership, dba)
Sumisa, Application for a Montana Intrastate) DOCKET NO. T.02.21.PCN
Certificate of Public Convenience and Necessity.) ORDER NO. 6518

FINAL ORDER

APPEARANCES

For the Applicant:

Carl James Asimus and Joshua Harlow Stevens, 5237 Highway 89 South, #7,
Livingston, Montana 59047.

Protestants:

None

Before:

Matt Brainard, Commissioner and Hearings Examiner

For the Commission:

Wayne Budt, Administrator, Transportation Division
Lisa Swanson, Staff Attorney

BACKGROUND

1. On February 5, 2002, the Commission received an application from Applicants, Carl Asimus and Joshua Stevens (dba Sumisa) for a Certificate of Public Convenience and Necessity, Class A, requesting authority to transport passengers from Livingston to Gardiner and back with intermittent points of Emigrant, Corwin Springs, and Chico Hot Springs. The application is limited to transportation of 15 passengers.

2. The Commission received written protests from VIP Taxi, 112 S. 6th, Livingston, Montana 59047; and 4x4 Stage, Inc., 1765 Alaska Rd. S., Belgrade, Montana, 59714-9403.

3. There were no Protestants at the Hearing.

4. A Notice of Public Hearing was served May 10, 2002, and the Commission held a Hearing on Wednesday, June 12, 2002, at the Livingston City Hall, Community Room, 414 E. Callendar, Livingston, Montana. At the conclusion of the Hearing, Applicant requested the Commission to issue a Final Order.

5. Applicant did not file a Brief.

SUMMARY OF TESTIMONY

6. Carl James Asimus and Joshua Harlow Stevens appeared and testified in support of their application. Mr. Stevens testified that Sumisa would carry maximum 15 passengers, charge 33 cents a mile, offer locals a discount and that it would not take business from VIP but rather would compliment VIP's business. Mr. Asimus testified as to the financial integrity and assets of Sumisa.

7. Tony Barker is a former VIP employee. Ms. Barker stated the Sumisa Shuttle would be a good idea and a lot of people would use the shuttle. Barker stated that VIP is cost prohibitive for many people costing approximately \$60 one way from Livingston to Gardiner, \$120 round trip. Ms. Barker quit VIP three months prior to the Hearing. During her employment with VIP, she would be turned down 1-2 times a week from people that could not afford VIP's fare from Livingston to Chico and Gardiner.

8. Cullin Davis is the manager of Chico Hot Springs. Mr. Davis stated that Chico has 164 employees, many of whom would use the bus. Mr. Davis stated some employees are visually impaired, cannot drive themselves to work and would use the shuttle. He said that many guests at Chico would also use the shuttle. Chico management talked of subsidizing the costs of the shuttle for employees. Chico also looked into running a shuttle service but the liability factor made it cost prohibitive. Mr. Davis also stated that the winter weather makes for poor driving conditions and that many people would prefer not to drive.

9. Melody Hake lives at #3 Pray Siding Road, Paradise, Montana. Ms. Hake owns the Medicine Hat Ranch where she operates a riding camp for foster children. Ms. Hake has raised six children of her own. Medicine Hat Ranch contracts with the foster program, Youth

Dynamics II, a state funded foster program. Ms. Hake is devoted to teaching children to ride and wants to give all kids who so desire, the opportunity to learn to ride. Ms. Hake stated that getting the kids transported from Livingston to the ranch has been a big problem. Most foster parents work and cannot take the time off to drive the kids to riding camp nor can most families afford to pay the VIP fare. Ms. Hake stated many of the kids resort to hitchhiking in order to get to the ranch. Ms. Hake stated she personally makes several trips a week to transport kids from Livingston to the ranch. Ms. Hake stated she had just made two trips hauling kids from Livingston to the ranch the morning of the hearing.

10. Dwayne Hodgkinson lives and works at 55 Runway Lane, Livingston, Montana where he owns the Wings and Spurs flying school. Mr. Hodgkinson has taught flying lessons for 17 years at this location and stated during that time, VIP taxi only brought students out on three occasions. The majority of students live in Livingston and range in age from 13 to 60. The school operates from 7 a.m. until dark. Mr. Hodgkinson stated that many of the students are in need of affordable transportation service and would utilize the Sumisa shuttle as taxis are cost prohibitive to most people. Mr. Hodgkinson stated that many parents of the younger students would use the shuttle to transport their kids to the flight school.

11. Carey Sarles manages and drives for VIP Taxi. VIP has been in business for two years. He states that VIP doesn't get many calls from Chico and Emigrant but they get a lot of customers wanting rides to Gardiner. VIP charges a dollar per mile. Mr. Sarles hauls customers 2-3 times a week to Chico. He hauls federal express packages two times a week. VIP gives Park employees a 10% discount. VIP runs four taxis and 2 cars for federal express. Mr. Sarles conceded that Sumisa Shuttle could complement VIP taxi in that Sumisa would bring more people.

Intervenor Testimony: None

Public Testimony

12. Ashley D. Branning lives at 1765 Alaska Road South, Belgrade, Montana. Mr. Branning operates 4x4 Incorporated Taxi. He runs 16 vehicles, however, he does not usually make any trips from Livingston to Gardiner or Chico. Mr. Branning stated if a customer calls from Livingston for a ride to Chico or Gardiner, he refers the call to VIP taxi.

13. Mary Belle Harper is a Livingston resident and formerly owned and drove for VIP for eight years. Ms. Harper feels that there is not enough business to support VIP and Sumisa and that Sumisa would harm VIP's business.

14. Linda Sarles is a Livingston resident and stated she believes it is against the law to offer discounts.

DISCUSSION, ANALYSIS AND FINDINGS

15. In considering applications for operating authority, the Commission is governed by the provisions of 69-12-323, MCA. Paragraph (2)(a) of that section provides as follows:

If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefore shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service

16. The Commission must determine: (1) Whether Applicant demonstrated a public need for the shuttle. (2) If there is a need, can existing carriers meet the need? If existing carriers can meet the need, an application for additional authority will generally be denied. (3) Will a grant of authority to Applicant hurt existing carriers contrary to the public interest? (4) Is Applicant fit to provide the service? The traditional analysis has been stated most concisely in Pan American Bus Lines Operation, 1 MCC 190, 203 (1936). The question Pan American focused on is whether the new service is responsive to a public need; whether this purpose will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

17. The first question to address is whether Applicants have demonstrated a public need for the proposed shuttle. The Commission finds Applicants have shown a need. Applicants presented several witnesses who testified on the need for a shuttle service from Livingston to

various points. Cullen Davis stated many of Chico's 164 employees would use the shuttle as well as Mr. Davis himself. Some of the employees are visually impaired and have to rely on others for rides to and from Livingston to Chico. Mr. Davis also stated that many patrons of the Chico food and beverage establishment often choose not to drive after imbibing on spirits and would use the shuttle. Mr. Davis stated the employees cannot afford VIP taxi and the Sumisa shuttle would be affordable. Chico management has discussed subsidizing the cost of the shuttle for employees. Mr. Davis also stated that the shuttle would compliment VIP in that more people from Livingston would come to Chico on the shuttle that may not drive or take a taxi and may want to leave at a time the shuttle does not run and would then call VIP for a ride. Ms. Hake runs the riding school for foster kids and stated the need for a shuttle to help transport kids who cannot get a ride or afford the taxi fares. Mr. Hodgkinson runs the flying school and stated many students of his would use the shuttle as the VIP taxi is too costly. Carey Sarles, VIP driver, admitted that Sumisa shuttle might compliment his taxi business – "that anything is possible"

18. The Commission believes Applicant demonstrated need for scheduled bus service and that existing carriers cannot meet the need. Also, the Commission believes that granting Applicant the authority would not cause harm to existing carriers. There were no protestants at the hearing. The public witnesses, Ashley Branning of 4x4 Inc., and Carey Sarles of VIP did not demonstrate they would suffer harm. 4x4 rarely transports passengers from Livingston to Chico or Gardiner and stated they refer calls to VIP. Mr. Sarles of VIP stated the shuttle may compliment his business. Mr. Sarles stated there is not a need. The Commission disagrees.

19. The Commission believes Sumisa is financially solvent. Owner Carl James Asimus stated Sumisa has two 15 passenger buses ready for purchase if and when they are granted authority. The Commission believes Sumisa is fit, willing and able to transport passengers from Livingston to Gardiner with intermittent stops at Chico and Corwin Springs. Applicant will need to comply with all Commission rules and orders prior to beginning the shuttle service.

CONCLUSIONS OF LAW

1. The Montana Public Service commission properly exercised jurisdiction over the parties and matters in this proceeding pursuant to title 69, Chapter 12, MCA.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter.

3. Applicant has demonstrated a public need, that existing carriers cannot meet the need, that existing carriers would not be harmed by the new service, that the new service may even help existing carrier's business, and that Applicant is fit.

4. Following hearing on the application and based upon the evidence in the record the Commission concludes that public convenience and necessity do require the Commission to grant the Application herein.

ORDER

WHEREFORE IT IS ORDERED that the Application in Docket No T-02.21.PCN is GRANTED authorizing the following: Class A-Passengers between Livingston, Montana and Gardiner, Montana, serving the intermediate points of Emigrant and Corwin Springs and the off-route point of Chico Hot Springs.

IT IS FURTHER ORDERED that the Applicant must, within thirty days of the mailing of the notice of the rights herein granted comply with all rules and regulations of the Montana Public Service Commission.

DONE AND DATED this 16th day of July, 2002 by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GARY FELAND, Chairman

JAY STOVALL, Vice Chairman

BOB ANDERSON, Commissioner

MATT BRAINARD, Commissioner

BOB ROWE, Commissioner

ATTEST:

Rhonda J. Simmons
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.
A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Final Order, Number 6518 issued in Docket T-02.21.PCN in the matter of Carl James Asimus and Joshua Harlow Stevens, a Partnership, dba Sumisa, Livingston, Montana has today been sent to all parties listed.

MAILING DATE: July 19, 2002

FOR THE COMMISSION

FIRST CLASS MAIL

Carl James Asimus and Joshua Harlow Stevens, a Partnership
dba Sumisa
5237 Highway 89 South #7
Livingston, MT 59047

AS ITS INTERESTS MAY APPEAR:

Montana Consumer Counsel
616 Helena Avenue
P.O. Box 201703
Helena, MT 59620-1703